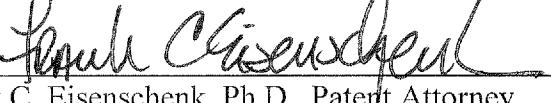


I hereby certify that this correspondence is being electronically filed in the United States Patent and Trademark Office on December 20, 2010.

COMMUNICATION
Patent Application
Docket No. UTR.106XC1


Frank C. Eisenschenk, Ph.D., Patent Attorney

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner : Alton N. Pryor
Art Unit : 1616
Applicants : Kimberly D. Gwinn, James Green, Susan Hamilton
Serial No. : 10/541,048
Filed : April 4, 2006
Conf. No. : 6089
For : Use of Herbs as a Delivery System for Bioactive Phytochemicals

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

COMMUNICATION

Sir:

Applicants filed a Request for Continued Examination (RCE) Transmittal on December 7, 2010 in the above-referenced patent application. Provided herewith is a Declaration Under 37 C.F.R. § 1.131 executed by the inventors which disqualifies the APS 2002 Annual Meeting as prior art.

In view of the foregoing remarks, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



Frank C. Eisenschenk, Ph.D.
Patent Attorney
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Address: P.O. Box 142950
Gainesville, FL 32614-2950

FCE/sl

Attachment: Declaration Under 37 C.F.R. §1.131

DECLARATION UNDER 37 C.F.R. § 1.131
Docket No. UTR.106XC1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DECLARATION UNDER 37 C.F.R. § 1.131

Sir:

DR. KIMBERLY D. GWINN, DR. JAMES GREEN, AND DR. SUSAN HAMILTON DECLARE:

1. THAT we are co-inventors of the invention disclosed and claimed in U.S. Application Serial No. 10/541,048.
2. THAT we conceived and reduced to practice compositions containing *Monarda didyma* and the uses for such composition in the control of damping off in tomato prior to the publication date of the APS Abstract and the presentation of the data at the conference between July 27 and July 31, 2002 as evidenced by the disclosure of data in this regard within the abstract (see Exhibit 1).
3. THAT Exhibit 1 is a copy of the aforementioned Abstract.

We hereby further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Further, Declarants sayeth not.

By: Kimberly D. Gwinn Date: 12/17/10
Kimberly D. Gwinn, Ph.D.

By: James Green Date: 12/17/10
James Green, Ph.D.

By: Susan Hamilton Date: 12-17-10
Susan Hamilton, Ph.D.



Back

APS 2002
Annual Meeting
July 27-31, 2002
Midwest Express Center
Milwaukee, Wisconsin



APS Abstracts of Presentations

Monarda didyma and control of damping off of tomato. S. E. Greene (1), K. D. GWINN (1,2), D. J. Trently (1), S. L. Hamilton (2), and B. H. Ownley (1,2). (1) Dept. Entomol. & Plant Pathol.; (2) Bioactive Natural Products Center of Excellence, University of Tennessee, Knoxville, TN 37996-4560. *Phytopathology* 92:S31. Publication no. P-2002-0223-AMA.

Herbage of *Monarda didyma*, a plant with high concentrations of antifungal compounds, was added to greenhouse growth medium to determine if seedling losses caused by *Rhizoctonia solani* could be reduced. The experiments were designed as factorials with 2 rates of *Monarda* herbage, 0 or 10% (v/v) and 2 rates of *R. solani* inoculum, 0 or 2% (v/v) with 20 replicates in a randomized complete block design. Treatments were added to greenhouse germination mix. Three seeds were planted per cell. Seedling emergence and height were measured at one week. Amending germination mix with herbage from 'Marshall's Delight' increased seedling height and germination above that of controls regardless of *R. solani* infestation. For 'Elsie's Lavender', shoot height and germination were reduced in treatments containing only herbage but not in those containing herbage + *R. solani*; the disease index of herbage or herbage + *R. solani* was less than pathogen alone but greater than uninfested, no herbage control. Amendment with 'Sioux' herbage did not protect against *R. solani*.

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